

Publications

For the best
performance of the
Director and
Board function

**PRINCIPLES OF GOOD
CORPORATE GOVERNANCE
FOR
UNLISTED COMPANIES
Spain**

**CODE OF
GOOD PRACTICES**

**FOR DIRECTORS AND
BOARDS**

**CODE OF GOOD PRACTICE
FOR DIRECTORS**

PRINCIPLES OF GOOD CORPORATE GOVERNANCE FOR UNLISTED COMPANIES

Code of Good Practice for Directors and Boards

First edition - December 2005
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FOREWORD

This first edition of **Principles of Good Corporate Governance for Unlisted Companies** has been prepared by the Professional Standards Committee of the Instituto de Consejeros-Administradores.

The purpose of this document is to offer Spanish companies that are considering the creation of a Board of Directors, and the Directors and Boards of Directors of Unlisted companies a set of principles which relate to international best practices for Good Corporate Governance duly adapted to the characteristics of Unlisted companies. When drafting this work, we sought practical, gradually adapted and widely accepted proposals that correlate with the "comply or explain" principle.

In general, The *Instituto de Consejeros-Administradores* upholds the need for a reasonable balance between regulation, mandatory rules, and self-regulation, rules which are not obligatory and may be followed by all those who wish to spearhead corporate governance and which, if not observed, require an explanation for non-compliance with said rules.

The application of Good Governance practices means introducing significant changes in the modus operandi of companies. Accordingly, in this **good practice code** we have chosen to **offer the Unlisted company a gradual procedure for implantation, divided into three phases**, with the **possibility, therefore, to attain different levels, and including alternatives in each of these phases, so that each company can adapt the steps taken in Good Corporate Governance to its particular situation.**

The levels of Good Corporate Governance increase in each phase, and improvements are cumulative. Each company must determine which phase of implantation it wishes to attain and the pace at which the procedure will be undertaken.

If shareholders wish company shares to be listed, once phase three of this Good Practice Code has been implanted the company will be in a position to easily fulfil the necessary requirements, with regard to Good Corporate Governance.

At the same time, this Good Practice Code addresses the possible creation of **Advisory Boards** and their connection and position vis-à-vis the Board of Directors. This code also bears in mind the reality of the **Business Family**, with its own particularities, and therefore sets aside a section to discuss this.

FOREWORD

The Principles of Good Corporate Governance for Unlisted companies represent an innovative initiative that offers the company a practical **tool**, for **gradual implantation** and **applicable to all types of companies** and/or businessmen.

The principles of Good Corporate Governance included in this document aim at becoming a reference point in Spain for listed companies. Adoption of the code is voluntary, although, given the benefits offered by increased professionalism in Corporate Governance, we do recommend its adoption.

In addition, the principles included herein should be regarded as a benchmark to be followed by the directors of such companies if they wish to apply the best international practices of Good Corporate Governance. New updates will be incorporated in future editions.

Unlisted companies that have adopted this Code of Good Corporate Governance Practices should consider the advisability of **reporting** this fact in their annual report, or its publication in other media, as this will **enhance its value**, interest and respect by society.

In this first edition recommending rules for Directors and Boards of Unlisted companies, the Professional Standards Committee that led the preparation of this document was composed as follows: Mr. Jesús M. Caínzos Fernández, Mr. Jaime Carvajal Urquijo, Mr. Alfredo Cabañes Morelló, Mr. Antonio Abril Abadín, Mr. Fernando de las Cuevas Castresana, Mr. José María de Hita Planella, Mr. Luis Tejada Dunes and Mr. Marcial Campos Calvo-Sotelo.

The Governing Board and the Board of the Institute, represented by Mr. Fernando Igartua Arregui, Mr. Francisco J. Muñoz Neira, Mr. Juan Álvarez-Vijande García, Mr. Jesús Peregrina Barranquero, Mr. Luis Sancho Martínez-Pardo, Mr. Alejandro Plaza Ferrer, Mr. Enrique Sánchez de León, Mr. Jesús M. Caínzos Fernández, Mr. John de Zulueta Greenebaum, Mrs. Belén Romana Garcia, Mrs. Laura González Molero, Mr. Luis Tejada Dunes and Mr. Bernardo Villazán Gil actively contributed to the work carried out by the Professional Standards Committee, ensuring that this document may come to light as a benchmark for Good Corporate Governance for currently Unlisted companies that wish to be governed based on those criteria.

When preparing the principles of Good Corporate Governance for Unlisted companies included in this first edition, we have taken into account not only the reports and applicable Spanish legislation, but also the best generally accepted international practices of Good Corporate Governance for Unlisted companies

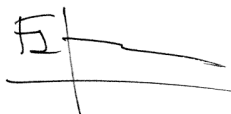
FOREWORD

The principles of Good Corporate Governance included in this paper set out the rules recommended by the IC-A to be applied by Directors and Boards of Unlisted companies.

In addition to what we have mentioned above, in particular, we acknowledge the members of the Institute who directly or indirectly submitted their concerns and views to us and thus contributed to the creation of these recommended practices.

July 2008

INSTITUTO DE CONSEJEROS-ADMINISTRADORES

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Fernando Igartua Arregui
Chairman

A complex, cursive handwritten signature with multiple loops and a long horizontal stroke at the bottom.

Juan Álvarez-Vijande García
Chief Executive Officer

PRINCIPLES OF GOOD CORPORATE GOVERNANCE FOR UNLISTED COMPANIES

INTRODUCTION: RELEVANCE OF GOOD GOVERNANCE PRACTICES.

The IC-A, made up on an individual basis by directors of companies or institutions, is a clear reference point for Good Corporate Governance in Spain. Accordingly, in April 2004, it decided to create a Committee of Professional Standards which on a regular basis and providing specific support to the Governing Board and the Executive Committee of the Institute, proposes and updates rules to be observed by corporate Boards and Directors in order to ensure the dissemination and updating of best international practices.

At present, the members of this Committee of Professional Standards boast, in aggregate, more than 150 years of experience as non-executive/external directors (shareholding/independent directors or otherwise), as executive/internal directors, as Board secretaries, in Advisory Boards and a with proven experience with a number of international Codes of Good Corporate Governance, in both Listed and Unlisted companies.

Corporate Governance for Listed companies in Spain started out with the Olivencia Commission. Subsequently, mention should be made of the recommendations of the Aldama Commission, the Spanish Transparency Act (*Ley de Transparencia*), Order ECO/3722/2003, as well as Circular 1/2004 of the CNMV (Spanish National Securities Market Commission) issued March 2004 on the Annual Report on Corporate Governance, Circular 2/2005 on Corporate Governance for Savings Banks, the Unified Code of Good Corporate Governance for Listed companies of 2006 and Circular 5/2007 of CNMV issued December 2007 on the new version Annual Report on Corporate Governance for listed companies as the milestones to this date.

Despite the importance of Unlisted companies, which account for more than 80% of the country's economy, **there is currently no Code of Good Governance Practices for Unlisted Companies.**

Accordingly, there is still a long way to go in pursuit of the goal to attain full implementation of Good Corporate Governance in companies, which will benefit both companies and Spanish society in general.

INTRODUCTION

Legal changes, standards and codes of Good Governance developed over the past 20 years, along with the obligations deriving therefrom, are usually associated with the requirements imposed on large companies, particularly Listed companies. However, **the spirit of those standards and, in many cases, their literality, are equally valid for Unlisted and smaller companies.** This is because **the basic principles that inspired the need for Good Corporate Governance are fundamentally for general application, independently of the size of the company and the legal structure of ownership and management thereof.**

The need to practice Good Governance is inseparably linked to the *raison d'être* of a Board of Directors. This is the body designated by the owners (shareholders) to ensure its legitimate interests, to supervise and guide the progress of the company and to do so observing legal rules, ethics and the rights of those who, without being owners, have direct or indirect interests in the behaviour and progress thereof (customers, suppliers business partners, employees, authorities, competitors and the public in general, in areas such as the environment.

During this time, a series of standards and legal precepts has been developed that considerably increase the legal responsibilities accountable from the members of Boards of Directors of Mercantile Companies. However, what has actually changed, with the increasing significance attributed to Good Corporate Governance, is not so much the definition of a new type of responsibilities for Boards which, strictly speaking, they have always had, but the **express requirement for greater efficacy in the form of exercising and putting those fundamental responsibilities into practice.** Along with this greater requirement for efficacy is that of evidencing that this is done in practice, giving transparency to the degree of compliance with a series of criteria and principles, which enable verification, from the outside, that a determined company does indeed practice Good Governance. **In short, it is intended to meet the legitimate expectations of owners or shareholders, who need protection for their rights and interests and who rely on the support of the regulatory authorities and, in many aspects, on public opinion, to achieve this.**

In this context, Good Governance criteria go beyond the observance of laws and rules. What makes their application by any company particularly important, irrespective of legal obligations or external pressure, is that they **permit the establishment of more effective and fluid relations with their shareholders and with third parties that contribute, directly or indirectly, to their sustainable development and the achievement of their ultimate aims.**

INTRODUCTION

However, various studies indicate that active investors clearly value these practices, as a better expectation of development and the creation of value and, accordingly, are prepared to pay a premium for the listing of securities of better governed companies.

In the case of unlisted companies, it is logically more difficult to obtain direct evidence. **However, survival studies and studies on the development of family businesses exist, whose protagonists believe that Good Governance practices are a determining factor in their shareholding stability and long term success, and positively contribute, in cases of access to capital, towards alliances or purchase or merger operations.**

In this type of companies, the shareholders are frequently specific individuals, with significant holdings, and it is possible to explicitly ascertain their expectations. **Their good management and the transparency of governance and management are of utmost importance. The necessary initiative and impulse by owners and directors, when implanting Good Governance practices are, if possible, even greater than in listed companies, because, in these, the presence and demands of regulatory entities are lower.**

The universe of unlisted companies covers a wide spectrum, with vast differences regarding size, shareholding structure, management model and, obviously, corporate governance practices. In parallel, the concept of "Good Governance" includes diverse aspects, whose application frequently implies significant changes in the behaviour of companies. The adaptation process must be approached stringently, but also with realism, bearing in mind that the starting point for these aspects will condition both priorities and the rhythm of changes to be made.

Throughout this document, which has an eminently practical approach, it is intended to adopt a broad perspective, emphasising the various aspects that determine "Good Governance" and the criteria that should guide companies that wish to apply these. In turn, it is intended to highlight not only what constitutes the expectations to be obtained, but also practical nuances and the possible gradual evolution towards these expectations.

July 2008

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE
FOR UNLISTED COMPANIES**

Advisory Boards and Family Businesses

Code of Good Practice for
Directors and Boards

Spain

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O. PREAMBLE

Good Governance should represent a legitimate expectation for all companies, whether listed or otherwise. This code of Good Governance Practices sets forth the guidelines to be followed by Unlisted companies when improving their systems of governance.

When addressing the issue of Good Governance in an UNlisted company, the IC-A has borne in mind that the universe of UNlisted companies encompasses, at the same time, small enterprises, medium and large enterprises, in the same way as companies with a single shareholder or with a broader shareholding, and first generation family businesses along with longer established ones.

The application of Good Governance practices entails introducing significant changes in the modus operandi of companies.

Accordingly, in this **good practice code** we have chosen to **offer the Unlisted company a gradual procedure for implantation, divided into three phases, with the possibility, therefore to attain different levels, and including alternatives in each of these phases, so that each company can adapt the steps taken in Good Corporate Governance to its particular situation.**

The levels of Good Corporate Governance increase in each phase, and improvements are cumulative. Each company must determine which phase of implantation it wishes to attain and the pace at which the procedure will be undertaken.

At the same time, this Good Practice Code addresses the possible creation of **Advisory Boards** and their connection and position vis-à-vis the Board of Directors.

This code also bears in mind the reality of the **business family**, with its own particularities, and therefore sets aside a section to discuss this.

We would point out that future approval of the European Union Audit Directive may possibly set the obligation for those companies, defined in each country as being of public interest, to create an Audit Committee.

I. THE BOARD OF DIRECTORS

In the small and, in particular, in the family business, during the initial stages, it is frequent to find that the company is governed by a sole administrator, the founder or sponsor of the firm, or one of its main shareholders.

This code of good practice advocates the Board of Directors as the governing body par excellence, as an active, informed and independent body.

Below we describe three differentiated phases, which address the transition from sole proprietorship to the creation of a Board of Directors, including external and independent professionals, structured into Committees and adapted to the most demanding Good Governance practices.

Having reached the third phase, the company will be in a position to easily fulfil the requirements necessary to become a listed company, should the shareholders so wish, insofar as Good Corporate Governance.

I.1.- PHASE ONE

I.1.1- Professionalisation of the company

Professionalisation is a fundamental step along the way to improving corporate governance.

This process begins with the incorporation of suitably trained and experienced professionals in company management structures, including the Steering Committee.

The incorporation of external professionals mentioned above must be made having clearly defined their duties, responsibilities and with periodic evaluation of their performance to predefined targets.

At the same time, external professionals will join the Advisory Board, if any, which we will discuss below.

The next step is to incorporate executives of the company, such as Executive Directors, to the Board of Directors, once this has been formed.

I.1.2.- Creation of an Advisory Board

Initially, in those companies that do not yet have a Board of Directors, we would recommend, during the transition towards creating that Board, that an **Advisory Board** be formed, composed of experienced persons, alien to the capital and management of the company, from which the Board of Directors will evolve.

The **Advisory Board**, to assist in Good Governance, must act in accordance with pre-established rules for functioning, and must apply the following recommendations to the Board of Directors with regard to meetings, agenda, minutes of meetings and secretariat.

I.1.3.- Creation of a Board of Directors with shareholders and executives

Later on, a Board of Directors may be created, with clear rules for functioning and determination of those decisions that require approval from the Board and those that may be approved by the Chief Executive.

During this first phase, the Board of Directors will normally be composed of shareholders and key executives of the company, (who may be shareholders or not).

This Board will have to assume some of the essential duties for Good Corporate Governance right from the start, in particular 1) commissioning an external account audit; and 2) rendering accounts to all shareholders, transparently and regularly. Both duties define a minimum threshold to which any company wishing to progress in Good Governance practices must aspire.

Given that there will be no external professional/independent Directors on the Board of Directors, the Advisory Board could continue to be an adequate formula for the development of Corporate Governance, by contributing expert opinions to the newly-created Board.

I.1.4.- Composition of the Board

The number of members will be determined by the size of the Company. We recommend no fewer than five (5) and no more than ten (10) Directors.

I.1.5.- Board Meetings

The Board will meet with the frequency necessary to discuss matters within its competence. We recommend that at least five meetings be held per year. In practice, between five and ten meetings are usually held, at regular intervals.

Board meetings should last long enough to discuss the items on the Agenda in sufficient depth.

I.1.6.- Agenda

The Agenda for Board meetings, insofar as possible, should include all items it is expected to discuss at each one.

We recommend that determined matters, such as follow-up of compliance with the annual budget or the Company's strategic plan, be a recurrent item on the Agenda.

Directors should be given all necessary information and documentation on each item of the Agenda in sufficient time, to ensure active participation by Directors in the discussion and eventual adoption of decisions.

I.1.7.- Minutes of Meetings

Minutes will be taken of Board meetings, which will briefly but fully describe the most significant discussions and the various resolutions adopted, indicating, if appropriate, voting results.

If possible, the minutes will be drafted and approved at the end of the meeting. Otherwise, they will be drawn up and approved as soon as possible.

Additionally, Directors will be informed of procedures carried out to formalise and execute the resolutions adopted and the exact terms thereof.

I.1.8.- Information to Directors

Regarding votes, all Directors should bear in mind the fundamental principle of "don't approve what you don't understand or don't know, or with which you don't totally agree".

In principle, all Directors are entitled to claim and obtain from the Company bodies and employees any type of information they deem necessary for the adequate performance of their offices.

The Chairman's task is to stimulate the debate and determine the information that is reasonably necessary at any time to ensure that Directors can form an informed opinion and criterion on the diverse matters within their competence. Non-executive Directors will decide whether the information received is sufficient and whether it has been provided in sufficient time to form an informed opinion and criterion, and can ask for further information and clarifications they deem necessary.

Ideally, the Board of Directors will adopt its decisions by consensus.

I.1.9.- Account Auditor

All companies that seek to advance along the path to Good Governance must submit to an external Annual Account audit, even when they do not meet the legal requirements for external audit.

I.1.10.- Secretary of the Board

The Secretary of the Board, who will act objectively and impartially at all times, plays a key role in ensuring that the procedures for functioning of the Board are followed and are reviewed periodically.

The Chairman of the Board and the other Directors will be advised by the Secretary of the Board on liability they may incur at any time, pursuant to legislation in force, the articles of association and the Board Regulations.

His appointment and cessation will be approved by a Board plenary and, accordingly, it is advisable to establish the qualified majorities to preserve the independence and immovability of the Secretary.

The Secretary of the Board will report to all other members of the Board through the Chairman, and will advise the latter on all matters within his competence and, particularly, matters of Corporate Governance. At the same time, he will ensure, at all times, due observance of the Law, the Articles of Association and Regulations, as well as the safekeeping of documentation and official books of the Company

I.2. PHASE TWO

During the second phase, Good Governance will undergo the greatest internal change. The company will then progress from having a Board of Directors composed exclusively of shareholders and executives, to incorporating External Independent Professional Directors, whose competence profiles will be defined in a Director's Charter.

External Independent Professional Directors will play an active part in the life of the Board. In particular, one of their relevant duties will be to assist in the resolution of conflicts that may arise among shareholders and, accordingly, the interests of all shareholders will be taken into account.

Along with the incorporation of these External Independent Professional Directors, the **exclusion** of Executive Directors is noteworthy in the preparation of proposals in relation to determined duties of the Board, given the potential conflict of interest.

I.2.1.- Preparation of Board Regulations

During this phase of Good Governance, there must be a Board Regulation to regulate aspects such as the Nomination of Directors, composition and functioning of the Board and policies for the remuneration of Directors.

The Regulations will initially be prepared by the Board, without prejudice to submission to approval of the General Meeting.

The scope and detail of this Regulation will represent a qualitative improvement on phase one.

I.2.2.- Audit, Remuneration and Nomination Duties

Given that no Board committees are created during this second phase, we recommend that the Board in plenary, with the absence of executive Directors, assume the functions of Audit, Remuneration and Nomination Committees, described in phase three.

The exercise of audit duties by the Board will be more formal and executive Directors will not take part in direct supervision or in the preparation of the pertinent proposals.

I.2.3.- Incorporation of External Independent Professional Directors

During this Good Governance phase, External Independent Professional Directors are incorporated, whose number will increase gradually, and no minimum is recommended at this time..

I.2.4.- Director's Charter

When the Company is ready to incorporate External Independent Professional Directors on the Board, a Director's Charter will be drawn up, which will set forth the criteria of independence accountable therefrom (professional quality and prestige, availability, fair remuneration, etc.), retirement age, maximum number of mandates per term of office and other relevant aspects for exercise of the appointment.

I.2.5.- Director Training

Directors will be familiar, or be trained under adequate training programmes, in key issues for a better knowledge of the company. On-going training is the responsibility of the Chairman.

I.2.6.- Nomination and Remuneration of Directors

We recommend that a formal and transparent procedure be established for both the selection of new directors and the cessation of those in office, and to determine remuneration policies; and determine the specific remuneration of Executive Directors. To obtain the maximum consensus of all shareholders, it would be advisable to ratify the first executive appointment at a General Meeting.

Directors will not attend discussions to determine their remuneration.

I.2.7.- Transparency and Conflicts of Interest

Companies will observe the principle of transparency, understood not only in its formal aspect, but also from the perspective of conveying to shareholders complete and true information on its management, organisation, activities, and figures, with particular emphasis on its associated operations and conflicts of interest.

Systems should be consensuated for the resolution of conflicts of interest between the Company and its significant shareholders and board directors.

I.3. PHASE THREE

Phase three addresses the creation of Board Committees, separation of the roles of Chairman and chief executive, evaluation of the Board, its members and its Committees. At completion of this phase, the Company will have attained the most stringent standards of Good Governance for Unlisted companies.

I.3.1.- Board Committees

A Board of Directors organised into **internal** Committees will function more efficiently, as the Directors will be divided into small working groups specialised in specific areas, which will submit their proposals to the Board plenary.

The first Committee to be created will be the Audit Committee. The other Nomination and Remuneration Committees will be created gradually, depending on the needs and size of the Company.

I.3.1.1. Audit Committee

We recommend that this be composed **only** of External Directors (Non-executive Directors), with a majority of External Independent Professional Directors.

This Committee will have a written Regulation, approved by the Board of Directors, and published, which will refer to the authority delegated by the Board, to its functions and commitments, to its duties and responsibilities, and to procedures and rules for functioning.

The minimum competencies of the Committee will be, inter alia, to supervise the integrity of financial statements and annual accounts; to propose the appointment, renewal and revocation of the external auditor, preserving its independence, and approval of its annual working plan, conditions of its service provision agreement, etc., supervision of internal audit services, assessment of its working plan and relevant Company reports; and review of the risk control and management systems.

Whenever required, Company executives will attend meetings of this Committee.

I.3.1.2. Nomination Committee

This Committee will be composed only of external Directors (Non-executives) and a majority of External Independent Professional Directors. The Non-executive Chairman may form part of this Committee, but will not be its Chairman. In the event of a Senior Independent Director / Lead Director / Principal Director (see paragraph 3.3.- Chairman and Chief Executive), it is advisable that he be the Chairman of this Committee.

This Committee will have a written Regulation, approved by the Board of Directors, and published, which will refer to the authority delegated by the Board, to its functions and commitments, to its duties and responsibilities, and to procedures and rules for functioning.

The Committee will raise its proposals to the Board, for its knowledge and approval, to be referred to the General Meeting.

The Committee will at least be aware of the evaluation and the Key Management succession plan and will be informed of changes made thereto, including any incorporation or cessation, and the reasons therefore. Appointments in Key Management that depend on the chief executive will require the approval of the Board, following a report from this Committee. At the same time, this Committee will report on appointments, removals and resignation of the Chairman and the Secretary of the Board, and the Chief Executive.

Whenever required, Company executives will attend meetings of this Committee.

1.3.1.3. Remuneration Committee

This Committee will be composed only of external Directors (Non-executives) and a majority of External Independent Professional Directors.

This Committee may or may not be linked with the Nomination Committee.

This Committee will propose remuneration policies to the Board (including, inter alia, pension schemes, payments in cash and in kind, and stock options, and pluriannual Management remuneration) for Executive Directors and other Directors in general.

At the same time, this Committee will propose, before presentation to the Board, and for subsequent ratification by the General Meeting, inter alia, pension schemes, payments in cash and in kind, and stock options, and pluriannual Management remuneration and will be familiar with remuneration policies, individual remuneration of Key Management members and general remuneration policies of the Company.

The Committee will have a written Regulation, approved by the Board and published, which will refer to the authority delegated by the Board, to its functions and commitments, to its duties and responsibilities, and to procedures and rules for functioning.

Whenever required, Company executives will attend meetings of this Committee.

1.3.2.- Management and Control Systems

The Board will approve the Company's corporate strategy and will be familiar with business strategies, which will imply effective decision-taking. During this procedure, the Board will have adequate information, which it will analyse. The strategy will be reviewed periodically.

The Committee will ensure that there are risk management and internal control systems to guarantee the financial solvency of the company.

The Committee will maintain a direct communications channel with internal and external auditors, and will have no Company executives.

I.3.3.- Chairman and Chief Executive

In practical exercise of Company governance and management, nobody will have unlimited decision-taking powers. It is advisable for the offices of Chairman and Chief Executive to be held by different persons. Experience shows that a separation of these offices makes functioning of the board easier, minimises conflicts of interest and favours Good Corporate Governance. The Board will approve written rules to ensure a clear and explicit separation between the duties and responsibilities of each one.

The non-executive Chairman will prepare the Agenda for Board meetings, chair them and coordinate the functioning of this body; at the same time, along with the Committee Chairmen, he will coordinate and organise assessments of the Board and the Managing Director, and will keep the latter informed at all times. He will also have the additional duties he may be allocated by the Board and its Regulation.

In the event that the offices of Chairman and Managing Director are held by the same person, or in the event of an executive Chairmanship, a Senior Independent Director / Lead Director / Principal Director will be appointed from among the external independent professional Directors, who will act as liaison between the Board and its Chairman, and who will keep the Chairman informed at all times. He will be consulted by the Chairman on preparation of the agenda for meetings, will direct the Chairman's evaluation procedure, will chair the Nomination Committee, chair meetings of External Directors, coordinate external independent professional directors and will replace the Chairman on the Board in the event of his absence.

I.3.4.- Evaluation of the Board, its Members and its Committees

It is advisable for the Board to address periodic assessments of its performance, of its Directors, and of Board Committees, if any.

In all events, the Board will make an annual evaluation of its chief executive. This evaluation will be coordinated by the Non-executive Chairman (or by the Senior Independent Director / Lead Director / Principal Director when the Chairman is executive), who will submit the results to the chief executive.

I.4.- ANNEX: PRIMAY FUNCTIONS OF THE BOARD OF DIRECTORS.

The principles of Good Governance are defined as a series of functions to be performed by the Board of Directors. These functions can be grouped into six main areas.

I.4.1.- To lead the company at top level:

The Board will set the pace and conduct of the company, integrally and at top level, subject to whatever may be reserved to the General Shareholders' Meeting. This leadership will refer to all that is entailed in the development and achievement of the ultimate business aims and to how to achieve these in terms of transparency, ethics, responsibility and observance of the law.

I.4.2.- Definition of Corporate Strategy:

The Board is responsible for drawing up the **Mission and Values** that will guide the company and its ultimate aims, and will also convey that Mission and values to those responsible for Management.

In particular, it will approve **Corporate Strategy** and take an active part in its study and definition. It will also hear and approve **strategic decisions** (large investments, divestments, mergers and acquisitions or others) as well as **annual or pluriannual Business Plans**.

The Board will also ensure that the plans approved are executed efficiently and stringently in a manner coherent with the strategy defined and with the Values and Missions defined.

I.4.3.- To respond to shareholders and third parties:

The Board will have the responsibility to serve the **legitimate interests and expectations of its shareholders and will be obliged to render account thereto, fully and regularly, and to facilitate the exercise of their rights, ensuring a fair treatment for all shareholders including minorities and foreigners, if any.**

The Board **will ensure the necessary transparency** of relevant elements of information, such as: the financial situation, results, ownership or governance of the company; it will be responsible for the accuracy of information, as well as its presentation, with the frequency and dissemination required. **It will fundamentally ensure that shareholders have a true image of the situation and health of the company.**

The Board will ensure **full respect for the legitimate rights and interests of those persons or groups that, without being shareholders, are directly or indirectly affected by the behaviour of the company.** In particular, customers, suppliers, business partners,

employees, authorities, competitors and the public in general in matters such as the environment, health or safety. It will also ensure that specific policies are established to relate to these groups.

It will also ensure that active **communication** is maintained, adapted to the needs of each of the groups or individual persons in question.

I.4.4.- To supervise company management:

The Board will also supervise progress of the company in terms of **performance of its plans, profitability, efficient management, viability and development potential.**

It will **permanently assess the different risks** that affect it and ensure that these are given the necessary consideration.

Accordingly, it will ensure that the **necessary audit and control resources and procedures**, both internal and external, are available and that they are applied effectively.

I.4.5.- To supervise the executive:

The Board is responsible for the **selection and designation of the Chief Executive**, the establishment of his attributions and autonomy of decision and the policies and standards to be adopted in his relations with the Board (information, frequency of meetings and annual review calendars for specific issues). It must also ensure that **succession plans are permanently available**. If necessary, it will be responsible for his cessation and total or partial substitution.

The Board **will approve the specific objectives and targets of the Chief Executive and will assess the performance of his functions and their achievement.**

The Board will **define the specific salary scales and amount of remuneration** of the Chief Executive and, following assessment of his performance, will approve the amounts to which he is entitled annually or plurianually.

At the same time, the Board will approve proposals for the appointment and cessation of **Key Managers**, as well as assessment and remuneration policies for these. It will also see the result of his assessments to estimate his capabilities and potential.

I.4.6.- Management of the Board:

The Board will be responsible for its own management, in the broad meaning of the word, **subject to the attributions reserved for the General Shareholders' Meeting.**

First of all, **it must ensure that the Board is adequately composed and propose the designation and, as the case may be, removal of Directors to the General Meeting.** Accordingly, it will select and identify persons with the appropriate professional and personal profile and will also ensure the maintenance of a balance of power on the Board that genuinely responds to the interests of all shareholders.

The Board will establish **its own internal structure**, particularly the functions of **Chairman and whether he will or will not be a person other than the Chief Executive.** It will also define the Committees to be set up and their composition.

The Board will determine its own **working procedures.** These will cover the frequency and duration of Board meetings and meetings of each of the Committees and the basic contents thereof throughout the year. A more active participation of Boards is a generalised trend.

The Board will also lay down its own **remuneration criteria and policies**, and will ensure that this obeys the higher interest of its shareholders.

Finally, the Board will establish a discipline for evaluation of its own management, which will be performed regularly, using preferably external or internal resources.

II. THE GENERAL MEETING

The General Meeting will be the main forum for shareholders to obtain information relative to the Company and in which to hold discussions and adopt decisions, participating actively in the main aspects of Corporate Governance. At the same time, the General Meeting will ensure that the interests and expectations of shareholders, albeit minority, will be satisfied and that full exercise of their rights will be guaranteed.

II.1.- SHAREHOLDERS' RIGHT OF INFORMATION

- The Shareholders' right of information is an essential principle underlying the philosophy of Corporate Governance, and the Board as a whole is responsible for ensuring its adequate operation and the establishment of a successful dialogue with shareholders. Stable, adequate and regular information channels between the Company and investors must be in place.
- The Board is responsible for submitting complete and comprehensive financial and management information in order to facilitate a balanced valuation of the current situation and the Company's foreseeable future.
- The Board must ensure that a dialogue with institutional investors exists so that these may become familiar with and participate in corporate plans, objectives and achievements. The Board will supervise the training plans necessary to ensure an adequate and sufficient understanding of the items and matters included on the Agenda.

II.2.- GENERAL MEETING PROCEDURES

The Board will ensure that the General Meeting is properly used as an adequate channel to communicate with shareholders and foster their participation. Therefore, with regard to the General Meeting, the following minimum standards are recommended:

- The General Meeting will approve its own Regulation, which will allow management and maintenance of control thereover.
- To call the General Meeting with sufficient notice to ensure that shareholders may benefit from information in time to exercise their rights prior to the Meeting and to decide whether to take part and how they are going to vote. In this sense, a longer period than the current minimum term of thirty (30) days should be granted.
- To advise the date, place and Agenda and to ensure that the complete text of the resolutions to be approved is made available.

- To contact all shareholders individually before the meeting called is held or when it is intended to hold a Universal Meeting, to ensure that they are informed and are aware of the items to be discussed.
- To establish the adequate mechanisms for shareholders with a participation coefficient of more than 5% to exercise their voting rights, so that they can add items to the Agenda, pursuant to legislation in force.
- To furnish shareholders all reports that justify each resolution proposed, at the time notice of the meeting is sent, at the Meetings called, or at the start of the meeting, or at Universal Meetings that have not been called.
- To vote amendments to the Articles of Association as a separate item on the Agenda, specifying each Article to be amended.
- To vote, individually, on appointments and removal of directors, as a separate item on the Agenda, depending on the phase reached by the company.
- To approve the remuneration and the remuneration policies of directors, as a specific item on the Agenda, depending on the phase reached by the company.
- To ensure availability, while Meetings are being held, of those professionals in the company, as well as external professionals, given their association or knowledge of the items to be discussed, who may be considered useful for shareholders to receive complete information, ask for clarification and thus form a better opinion.
- To ensure the right of shareholders present at the Meeting to have their interventions and votes set forth in the minutes.

III. GOVERNING BODIES OF THE BUSINESS FAMILY

This section is not exhaustive but is merely intended by way of example. It highlights those aspects that are specific in family businesses and that must be borne in mind during the transition towards Good Governance in those firms in which a family is the single shareholder or reference shareholder.

III.1.- THE FAMILY ASSEMBLY

The Family Assembly is the Family Institution, the main purpose of which is to foster Unity of the Business Family, facilitating knowledge of the Company by the Family and relations between its members.

Whereas shareholders are represented at the General Shareholders' Meeting, irrespective that they do or do not belong to the family, and their responsibilities and tasks are laid down by Law or in the Articles of Association, and their function is circumscribed to the Company, the Family Assembly refers to a family and its composition will depend on each family –as we will see further ahead- and its scope of action refers to both matters that concern the relationship between the Family and the Company and those others that are exclusive to the family.

III.1.1.- Functions

- To formulate and form in family values, its business vision and its modus operandi and decision-taking.
- To facilitate communication, foster the exchange of information and sponsor understanding among family members.
- To study ways of offering family support to members vis-à-vis possible personal or family problems.
- To act as an initiation body in the company for the next generations, and to support their training and knowledge.
- To guarantee the support and trust of the family to the governing body and convey the family's attitude with regard to the company and possible serious problems.

III.1.2.- Composition and functioning

- The Family Assembly is meaningful in second and subsequent generation Family Businesses, i.e., as from the time the family reaches a certain number of members

Eventually, the first generation will also become relevant during the last phase of the Company, once the succession procedure is under way.

- The family is usually formed by direct descendants of the founding spouses as from a certain age (this may be 18 years of age).
- In-laws may or may not form part, or they may do so in determined circumstances (having been married for 5 years, for instance). This matter must be regulated beforehand, as well as the right to own shares.
- A Chairman will be appointed, who will be responsible for moderating meetings and preparing the agenda, and who will not be the Chairman of the Board of Directors which, besides offering greater leadership opportunities will help to reinforce the independence of both bodies. Chairmanship of the Family Assembly will be held by the Emotional Head of the Family, i.e., the person who is the centre of affection and respect.
- Between two and four meetings will be held every year and, in addition to company matters and reports, will discuss specific family issues, some of which will have an informal component addressed as strengthening family ties.
- Regulations will be drawn up, which will essentially include the Business Purpose, Members, Meetings, Organisation and Duties of the Chairman.

III.1.3.- Relevant issues

- The Family Assembly will face a variety of major issues:
 - A.- Related to the family:
 - Family history and traditions.
 - Aims and values of the founders who were present at its creation and development.
 - Current and future vision of the family in society: social responsibilities, participation in political, social, cultural life, etc.
 - Public image of the family.
 - B.- Company shareholders:
 - Influence of family values on definition and development of the company's strategy.
 - Roles to be played by shareholders on the different company bodies (Board of Directors, Steering Committee, employees, etc.).

- Possibility to support the commencement of new business by family members.

C.- Future shareholders:

- Planning of inheritance by the proprietors.
- Rules on the transfer of shares and valuation of the company.
- Training and development of the next generation.

III.2.- THE FAMILY COUNCIL

- The Family Council is normally created when the Family Assembly reaches a number that hampers the performance of its functions.
- Indeed, the relationship between the Family Council and the Family Assembly is equivalent to that existing between the Board of Directors and the Shareholders' Meeting.
- As a high performance working team, it should be composed of between 5 and 10 members, who will be chosen for their capability and knowledge and who will establish a renewal system that will permit maximum participation.
- Its composition should seek the highest level of representation: by family branches, by generations.
- It is fundamental to maintain an excellent level of communication with the governing body, basically at Chairman level.
- It should not be made up of family members who held executive responsibilities or formed part of the governing body.

III.3.- FAMILY PROTOCOL

The Family Protocol is the instrument for consolidation of the Family Unit and Commitment and of the latter with the Company. This is normally set forth in a document where, as a result of a strategic reflection procedure by members of the Family, the essential values thereof are evidenced and fundamental aspects of Family Governance and Corporate Governance are regulated.

All Family Protocols will include:

III.3.1.- Principles

Reasons to be a Family Business: heritage, company and family history, family and business values to be safeguarded, culture, family vision, ...

Type of Family Business it is wished to create: open or otherwise to external partners; willing to be listed in organised markets; work, management or family governance; investments and undertakings, circumstances, ...

What can be expected of each family member of the Family Business?

The following questions must be asked:

In what type of environment, or loss of initial spirit, should it cease to be a family business?

In what conditions will a family partner be excluded?

What criteria for growth, product, diversification and organisation, among others, will be incorporated in the corporate strategy?

What opportunities will be given to partners to develop their own initiatives?

What dividends or information or training policy for shareholders will be proposed to the Board of Directors?

III.3.2.- Rules on functioning

III.3.2.1.- Work in the Family Business

Policy for the incorporation of family members in the company: in what jobs; what requirements must be fulfilled and in the opinion of whom? Conditions to be fulfilled by non-family directors; criteria on assessment and remuneration systems; work of in-laws; retirement ages from the various jobs; contracting of professional or commercial services with family members or with their businesses,...

III.3.2.2.- Ownership

Succession policy and its recording in the will (this is deemed fundamental to facilitate governability of the company); restrictions on the free transferability of shares and participations inter vivos; type of authorisation, requisites and preferential acquisition rights that protect against the entry of unwanted shareholders; incorporation of a professional and consensuated system for determination of the value of the firm vis-à-vis possible settlements; possible stagnation of funds to meet possible problems of illiquidity by family members or to purchase shareholdings in pre-agreed conditions; ...

Governing bodies of the Company; General Shareholders' Meeting; Board of Directors. Points to be included in their respective regulations for functioning. Family members, external members, covenants (on syndication of shares, sale and purchase, unit sale, tag-along, mandate, etc.).

III.3.2.3.- FOSTERING OF UNITY

Governing bodies of Family Business: Family Assembly and Family Council. Basic criteria for their functioning and training.

III.4.- PERIODIC REVISION AND EVENTUAL MODIFICATION

Not all families have or must have a Family Protocol as such, however, good functioning of the family-business relationship requires that all matters inherent thereto be discussed and agreed based on a criterion of anticipation.

The Family Protocol, in order to be efficient, requires the active participation of the whole family in its preparation and must be wanted and cared for daily by the family and submitted to periodic study and review.

OTHER USEFUL INFORMATION

Information on Corporate Governance:

- <http://www.cnmv.es/index.htm>
- <http://www.iconsejeros.com/funciones/normas.html>

Annual Report on Corporate Governance for Listed Companies and Savings Banks:

- <http://www.iconsejeros.com/funciones/normas.html>

Principles of Good Corporate Governance of the Instituto de Consejeros-Administradores :

- <http://www.iconsejeros.com/funciones/normas.html>

Incluye Criterios de Independencia para Consejeros Independientes

Principles of Good Corporate Governance for Unlisted Companies of the Instituto de Consejeros-Administradores :

- http://www.iconsejeros.com/funciones/docs_download/PBGCENC.pdf

Self-Evaluation Questionnaire on Good Corporate Governance for Unlisted Companies:

- http://www.iconsejeros.com/img_noticias/070601CuestionarioAENoCot.pdf

Major International Corporate Governance Codes for Listed Companies:

- <http://www.iconsejeros.com/funciones/normas.html>

Most recent laws and reports:

- UE: Recomendación papel Consejeros No Ejecutivos, y comisiones del consejo aplicable a empresas que cotizan en bolsa. Independientes (UE, Febrero 2005)
- UE: Recomendación sobre remuneración de los Consejeros que cotizan en bolsa (UE, Diciembre 2004)

- OCDE Corporate Government Principles.(Abril, 2004)
- Combined Code on Corporate Governance. (UK, Julio, 2003)
- Higgs Review (UK, Enero, 2003)
- Nueva Versión Informe Anual Gobierno Corporativo Sociedades Cotizadas (España, Enero 2008)
- Código Conthe / Código Gobierno Corporativo para Sociedades Cotizadas (España, Mayo 2006)
- Código ético para empresas (España, Abril 2006)
- Principios de Buen Gobierno Corporativo para Empresas no Cotizadas (España, Diciembre 2005)
- Modificaciones en la Ley de Sociedades Anónimas, Responsabilidad Limitada y Anónima Europea (España, Noviembre, 2005)
- Cajas/Informe Anual de Gobierno Corporativo: Circular 2/2005 (España, Abril 2005)
- IC-A: Principios de Buen Gobierno Corporativo (pdf español) (pdf english). (España, Julio, 2004)
- Informe Anual Gobierno Corporativo: Circular CNMV 1/2004. (España, Marzo, 2004)
- Orden ECO/3722/2003 (España, Enero 2003). (España, Enero, 2004)
- Ley de Transparencia (España, Julio, 2003)
- Informe Aldama (España, Enero, 2003)
- Informe Winter (EU 2002)
- Sarbanes-Oxley (EEUU 2002)

General Information on Board Directors Selection:

- http://www.iconsejeros.com/funciones/docs_download/comentario_sobre_seleccion.pdf

General Information on Board Directors Remuneration:

- <http://www.iconsejeros.com/funciones/tribuna.html>

Other general information:

- Comisión Nacional del Mercado de Valores (Securities Market Commission) www.cnmv.es
- Banco de España www.bde.es

- Dirección General de Seguros y Fondos de Pensiones (Directorate General of Insurance and Pension Funds) www.dgseguros.mineco.es
- Bolsa de Valores de Madrid (Madrid Stock Exchange) www.bolsamadrid.es
- Gobierno Español (Spanish Government) www.la-moncloa.es
- Mercado Español de Futuros Financieros (Spanish Futures Market) www.meff.es
- Mercado Español de Renta Fija (Spanish Fixed-Income Market) www.aiaf-ecm.com
- Ministerio de Economía y Hacienda (Spanish Ministry of Finance) www.minhac.es y <http://portal.minhac.es/Minhac/Home.htm>
- Instituto Nacional de Estadística (National Bureau of Statistics) www.ine.es
- Instituto de Consejeros-Administradores www.iconsejeros.com

INSTITUTO DE CONSEJEROS-ADMINISTRADORES

The Instituto de Consejeros-Administradores (IC-A)

The Instituto de Consejeros-Administradores (IC-A) is the **Spanish association of Board Directors** from companies and enterprises. It is an independent organisation, non-political, made up of **individual Directors**.

Its objectives are to foster, disseminate and implement state-of-the-art Corporate Governance models, the highest standards for professional codes and the most demanding ethical practices for corporate governance, and to promote training programmes for Directors and other key players of Corporate Governance based on consolidated models, in order to ensure the development and professionalisation of their professional role.

It also issues opinions on rules, regulations and guidelines which refer to Corporate Governance before and after they have been enacted, and assumes the representation and defence of Directors' interests before Public Administrations and the Civil Society.

IC-A represents Spain in the European Confederation of Directors' Associations (ecoDa) headquartered in Brussels.

Services for members:

- **Representation and Opinion**
 - *Opinion-creating representation of its members before the Public Administration and the Civil Society*
- **Professional Standards, Corporate Governance, Professionalisation**
 - *Best Practices and vision / International co-operation.*
 - *Good Corporate Governance Codes.*
 - *Compilation and definition of key functions in the Board.*
- **Professional career of Directors**
 - *Courses, workshops, conferences, publications, newsletters, books.*
 - *Fora and meetings of members with other Directors and relevant personalities.*
- **Information and Advisory Services**
 - *Asesoría legal; Seguros; Remuneración; Selección; Evaluación, Diseño y estructura de órganos de gobierno*
- **Servicios Preferenciales con Terceros**

For further information:

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Principles of Good Corporate Governance for Unlisted Companies

In general, The Instituto de Consejeros-Administradores upholds the need for a reasonable balance between regulation, mandatory rules, and self-regulation, rules which are not obligatory and may be followed by all those who wish to spearhead corporate governance and which, if not observed, require an explanation for non-compliance with said rules.

In this Code of Good Corporate Governance for Unlisted Companies, we have chosen to offer a gradual progression, in three phases, so that each company can adapt the necessary steps for Good Corporate Governance to their own reality. The degrees of Good Corporate Governance increase with each phase, and improvements are cumulative. Each company will decide which phase it wishes to reach.

At the same time, this Good Practice Code addresses the possible creation of Advisory Boards and their connection and position vis-à-vis the Board of Directors. This code also bears in mind the reality of the Business Family, with its particularities, and therefore sets aside a section to discuss this.

This innovative initiative offers the Unlisted company an eminently practical tool, for gradual implantation and applicable to all types of companies and/or businessmen.

The principles of Good Corporate Governance included herein are a recommendation for the rules advocated by the IC-A, for application by the Board and Directors of Unlisted companies.



For more information:

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